

EXHIBIT 1

EXHIBIT 1

Hinkel, LoriAnn

From: TurboCourt Customer Service <CustomerService@TurboCourt.com>
Sent: Thursday, April 04, 2013 2:42 PM
To: Hinkel, LoriAnn
Subject: AZTurboCourt E-Filing Courtesy Notification

PLEASE DO NOT REPLY TO THIS EMAIL.

A party in this case requested that you receive an AZTurboCourt Courtesy Notification.

AZTurboCourt Form Set #796850 has been DELIVERED to Maricopa County Superior Court.

You will be notified when these documents have been processed by the court.

Here are the filing details:

Case Number: CV2013-002434 (Note: If this filing is for case initiation, you will receive a separate notification when the case # is assigned.)

Case Title: Burciaga Vs. Accurate Cargo Delivery Systems Inc,

Filed By: John A Doran

AZTurboCourt Form Set: #796850

Keyword/Matter #: 1907/012118.001

Delivery Date and Time: Apr 04, 2013 2:33 PM MST

Forms:

Summary Sheet (This summary sheet will not be filed with the court. This sheet is for your personal records only.)

Attached Documents:

Notice of Removal to Federal Court: Notice of Filing Notice of Removal

Exhibit/Attachment (Supporting): Exhibit A

1
2 **LAW OFFICES**
3 **SHERMAN & HOWARD L.L.C.**
4 201 EAST WASHINGTON STREET, SUITE 800
5 PHOENIX, ARIZONA 85004-2327
6 TELEPHONE: (602) 240-3000
7 FAX: (602) 240-6600
8 (AZ BAR FIRM NO. 00441000)

9 John Alan Doran (AZ Bar No. 012112)
10 (JDoran@ShermanHoward.com)
11 Attorneys for Defendants

12 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
13 **IN AND FOR THE COUNTY OF MARICOPA**

14 FERNANDO BURCIAGA, a single
15 man,

16 Case No. CV2013-002434

17 Plaintiff,
18 V.
19 ACCURATE CARGO DELIVERY
20 SYSTEMS, INC., an Arizona
21 Corporation; KENNETH REYNOLDS
22 and KIMBERLY REYNOLDS, husband
23 and wife,
24 Defendants.

25 **NOTICE OF FILING NOTICE OF
26 REMOVAL**

27 Notice is hereby given that Defendants Accurate Cargo Delivery Systems, Inc.,
28 Kenneth Reynolds and Kimberly Reynolds ("Defendants") are this date filing a Notice
1 of Removal of this litigation to the United States District Court for the District of
2 Arizona. A copy of the Notice of Removal is attached hereto (exclusive of exhibits) as
3 Exhibit A.

4 RESPECTFULLY SUBMITTED this 4th day of April 2013.

5 **SHERMAN & HOWARD L.L.C.**

6 By: /s/ John Alan Doran

7 John Alan Doran
8 201 East Washington Street, Suite 800
9 Phoenix, Arizona 85004-2327
10 Attorneys for Defendants

ORIGINAL electronically transmitted to
the Maricopa County Superior Court using the
Arizona Turbo Court ECF System
for filing this 4th day of April 2013.

COPY of the foregoing mailed and e-mailed
This 4th day of April 2013 to:

Trey Dayes
Phillips Dayes Law Group PC
Suite 1500
3101 North Central Avenue
Phoenix, AZ 85012
treyd@phillipslaw.com
Attorneys for Plaintiff

Lori Hinkel

EXHIBIT A

EXHIBIT A

1
2 **LAW OFFICES**
3 **SHERMAN & HOWARD L.L.C.**
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5 PHOENIX, ARIZONA 85004-2327
6 TELEPHONE: (602) 240-3000
7 FAX: (602) 240-6600
8 (AZ BAR FIRM NO. 00441000)

9 John Alan Doran (AZ Bar No. 012112)
10 (JDoran@ShermanHoward.com)
11 Attorneys for Defendants

6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

8 FERNANDO BURCIAGA, a single
9 man,

Case No.

10 Plaintiff,

NOTICE OF REMOVAL

11 V.
12 ACCURATE CARGO DELIVERY
13 SYSTEMS, INC., an Arizona
14 Corporation; KENNETH REYNOLDS
15 and KIMBERLY REYNOLDS, husband
16 and wife,
17 Defendants.

18 Defendants, through counsel, pursuant to Rule 81(c), FED.R.CIV.P., hereby
19 notice the removal of the above-captioned case from the Superior Court of Arizona, in
20 and for the County of Maricopa, filed under Cause No. CV2013-002434, to this Court
21 and in support thereof assert:

22 1. This Court has jurisdiction pursuant to 29 U.S.C. § 201. This action may
23 be removed pursuant to 28 U.S.C. § 1441 (a) because Plaintiff's allegations include
24 asserted claims for violations of the Federal Fair Labor Standards Act.

25 2. This Notice of Removal is being filed within thirty (30) days after initial
26 receipt of Plaintiff's Complaint and is timely filed under 28 U.S.C. § 1446(b).

27 3. The time for which Defendants have to remove this case with respect to
28 the Complaint has not expired.

29 4. A Notification of Filing a Notice of Removal in Federal Court, a true and

1 correct copy of which is attached as Exhibit 1, has been filed in the Superior Court of
2 Arizona on behalf of Defendants.

3 5. All presently served Defendants have consented to the removal of this
4 case from Superior Court of the State of Arizona, County of Maricopa, to the United
5 States District Court for the District of Arizona.

6 WHEREFORE, Defendants respectfully request that the above action now
7 pending in the Superior Court of the District of Arizona be removed to this Court.
8

9 RESPECTFULLY SUBMITTED this 4th day of April 2013.
10

11 **SHERMAN & HOWARD L.L.C.**
12

13 By: /s/ John Alan Doran
John Alan Doran
201 East Washington Street, Suite 800
Phoenix, Arizona 85004-2327
14 Attorneys for Defendants
15
16
17
18
19
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21
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23
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This 4th day of April 2013 to:

Trey Dayes
Phillips Dayes Law Group PC
Suite 1500
3101 North Central Avenue
Phoenix, AZ 85012
treyd@phillipslaw.com
Attorneys for Plaintiff

Lori Hinkel

LOWER COURT'S PLEADINGS

LOWER COURT'S PLEADINGS

1 PHILLIPS DAYES LAW GROUP PC
2 ATTORNEYS AT LAW
3 Suite 1500
3101 North Central Avenue
3 Phoenix, Arizona 85012
4 (602) 258-8900
minute entries@phillipslaw.com

5 TREY DAYES
6 Arizona Bar No. 020805
7 treyd@phillipslaw.com
8 Attorney for Plaintiff

ORIGINAL

9
10 SUPERIOR COURT OF ARIZONA

11 MARICOPA COUNTY

12 Fernando Burciaga, a single man,

13 Case No.: CV2013-002434

14 Plaintiff,

15 vs.

16 Accurate Cargo Delivery Systems, Inc., an
17 Arizona corporation; Kenneth Reynolds and
18 Kimberly Reynolds, husband and wife,

19 Defendants.

20
21 SUMMONS

22 IF YOU WANT THE ADVICE OF A
23 LAWYER, YOU MAY WISH TO CONTACT
24 THE LAWYER REFERRAL SERVICE AT
25 602-257-4434 OR ON-LINE AT
WWW.LAWYERFINDERS.ORG. LRS IS
SPONSORED BY THE MARICOPA
COUNTY BAR ASSOCIATION

26 THE STATE OF ARIZONA TO THE DEFENDANT:

27
28 Accurate Cargo Delivery Systems, Inc.
29 c/o M Craig Murdy, Statutory Agent
30 2929 North Central Avenue, #1700
31 Phoenix, Arizona 85012

32
33 **YOU ARE HEREBY SUMMONED** and required to appear and defend within the
34 time applicable in this action in this Court. If you are being served within the State of Arizona,
35 you are required to appear and defend this action within twenty (20) days after the service of
36 the Summons and Complaint has been effected upon you, exclusive of the day of service. If
37 you are being served outside the State of Arizona, whether by direct service, by registered or
38 certified mail, or by publication, you are required to appear and defend this action within thirty
39 (30) days after the service of the Summons and Complaint has been effected upon you,
40 exclusive of the day of service. Service by registered or certified mail without the State of
41 Arizona is complete thirty (30) days after the date of filing the receipt and Affidavit of Service

1 with the Court. Service by publication is complete thirty (30) days after the date of first
2 publication. Direct service is complete when made. RCP 4, ARS §§ 25-311–381.22.

3 **YOU ARE HEREBY NOTIFIED** that in the event of your failure to appear and
4 defend in this action within the time applicable, a Judgment by Default may be rendered
against you for the relief demanded in the Complaint.

5 **YOU ARE HEREBY CAUTIONED** that in order to appear and defend yourself in this
6 action, you must file a proper Answer in writing with the Clerk of this Court, accompanied by
the necessary filing fee, within the time required. You are required to serve a copy of any
7 Answer upon Plaintiff's attorney. RCP 10(d), ARS § 12-311, RCP 5.

8 The name and address of Plaintiff's attorney is:

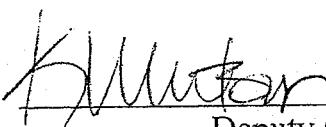
9 Trey Dayes
10 PHILLIPS DAYES LAW GROUP, P.C.
11 3101 North Central Avenue, Suite 1500
Phoenix, Arizona 85012
Tel: (602) 258-8900

12 Requests for reasonable accommodation for persons with disabilities must be made to
13 the court by parties at least 3 working days in advance of a scheduled court proceeding.

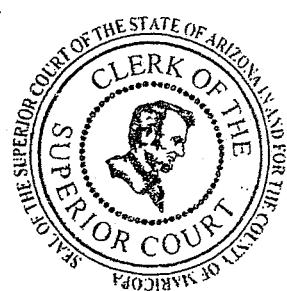
14 SIGNED AND SEALED this date: MAR 15 2013

MICHAEL K. JEANES, CLERK

16 MICHAEL K. JEANES
Clerk of the Superior Court

18 
K. WHITSON

19 Deputy Clerk



1 PHILLIPS DAYES LAW GROUP PC
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8 TREY DAYES
9 Arizona Bar No. 020805
10 treyd@phillipslaw.com
11 Attorney for Plaintiff

COPY

MAR 15 2013



MICHAEL K. JEANES, CLERK
K. WHITSON
DEPUTY CLERK

8 SUPERIOR COURT OF ARIZONA
9
10 MARICOPA COUNTY

11 Fernando Burciaga, a single man,
12 Plaintiff,

Case No.: CV2013-002434

13 COMPLAINT
14
15 (Unclassified Civil- FLSA Violation)
16 (Jury Trial Requested)

17 vs.
18 Accurate Cargo Delivery Systems, Inc., an
19 Arizona corporation; Kenneth Reynolds and
20 Kimberly Reynolds, husband and wife,
21 Defendants.

22 Plaintiff alleges:

NATURE OF THE CASE

23 1. Plaintiff bring this action against Defendants for unlawful failure to pay overtime
24 wages in direct violation of the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* ("FLSA")
25 and specifically the overtime provision of the Act found at §207(a).

26 2. For at least three (3) years prior to the filing of this action, Defendants had a
27 consistent policy and practice of requiring its employees to work well in excess of forty (40)
28 hours per week without paying them time and a half for hours worked over forty (40) hours per
29

1 week.

3. For at least three (3) years prior to the filing of this action, Plaintiff worked at least five (5) hours in excess of forty (40) hours per week and was not paid time and a half.

4. Plaintiff seeks to recover unpaid overtime compensation and an equal amount of liquidated damages, including interest thereon, statutory penalties, attorneys' fees and costs pursuant to 29 U.S.C. §216(b).

JURISDICTION AND VENUE

9 5. This Court has jurisdiction over the subject matter and the parties hereto pursuant
10 to A.R.S. §§ 12-123 and 12-401 and 29 U.S.C. §216(b).

6. Venue is proper under A.R.S. § 12-401 as the events giving rise to these causes of action occurred in Maricopa County.

PARTIES

7. At all times material hereto, Plaintiff was and continues to be a resident of Maricopa County, Arizona.

8. At all times material hereto, Accurate Cargo Delivery Systems, Inc., was incorporated in the State of Arizona and has its principal place of business at 2465 South 19th Avenue, Suite 2, Phoenix, Arizona 85009.

9. Upon information and belief, at all times material hereto, Defendant Kenneth Reynolds, was and continues to be a resident of Maricopa County, Arizona.

10. Upon information and belief, and consistent with the information available from the Arizona Corporation Commission, Defendant Kenneth Reynolds (“Defendant Reynolds”) was and is the owner of Accurate Cargo Delivery Systems, Inc.

11. Kimberly Reynolds is Kenneth Reynolds's wife. Kenneth and Kimberly Reynolds have caused events to take place giving rise to this Complaint as to which their marital community is fully liable.

12. At all relevant times, Plaintiff was an "employee" of Accurate Cargo Delivery Systems, Inc., as defined by 29 U.S.C. §203(e)(1).

13. The provisions set forth in 29 U.S.C § 206 and § 207, respectively, of the FLSA apply to Accurate Cargo Delivery Systems, Inc.

14. At all relevant times, Accurate Cargo Delivery Systems, Inc., was and continues to be an employer as defined in 29 U.S.C. § 203(d).

15. On information and belief, Defendant Reynolds is deemed an “employer” for purposes of the FLSA, including, without limitation, 29 U.S.C. §216, and is co-equally liable with Defendant Accurate Cargo Delivery Systems, Inc., for all matters.

16. At all times material to this action, Accurate Cargo Delivery Systems, Inc., was and is an enterprise engaged in commerce or in the production of goods for commerce as defined by §203(s)(1) of the FLSA.

17. Upon information and belief, at all relevant times, the annual gross revenue of Accurate Cargo Delivery Systems, Inc., exceeded \$500,000.00.

FACTUAL BACKGROUND

18. Accurate Cargo Delivery Systems, Inc. specializes in transporting freight for its customers statewide as well as out of state deliveries. Their website indicates they provide the following services: Local & Statewide LTL & Truckload, Same Day & Next Day Delivery, Arizona Delivery, Phoenix Delivery, Tucson Delivery, Las Vegas Delivery, Last Mile

1 Delivery, Forklift Assisted Delivery, Flatbed, Cross Docking, Pool Distribution, Warehousing,
2 Hazardous Material Handling, Interline & Agent Services, Home Delivery (2 Men), and Air
3 Freight Cartage. (found at <http://www.accuratecargo.com/cargo-services.html>).
4

5 19. Accurate Cargo Delivery Systems, Inc. hired Plaintiff to work as a non-exempt
6 hourly paid, forklift operator and warehouse crew member from approximately June 2010
7 through February 2013.
8

9 20. Plaintiff was paid wage of \$13.00 per hour.
10

11 21. Plaintiff's primary duty was a forklift operator for the Defendant.
12

13 22. Plaintiff loaded trucks that were designated for in state transport only.
14

15 23. Plaintiff's Responsibilities included loading and unloading freight and cargo.
16

17 24. Plaintiff was a non-exempt employee.
18

19 25. Plaintiff was not a manager.
20

21 26. Plaintiff did not exercise discretion and independent judgment with respect to
22 matters of significance.
23

24 27. From June of 2010 and continuing through February 2013, Defendant failed to
25 properly compensate Plaintiff for any of his overtime hours. During this time, Plaintiff was
26 regularly scheduled to work approximately 45 hours per week. Plaintiff also routinely worked
27 additional shifts.
28

29 Upon information and belief, the records concerning the number of hours worked
30 and amounts paid to Plaintiff are in the possession and custody of Accurate Cargo Delivery
31 Systems, Inc.

32 29. Accurate Cargo Delivery Systems, Inc.'s failure and/or refusal to properly
33

1 compensate Plaintiff at the rates and amounts required by the FSLA were/was willful.

2 30. Accurate Cargo Delivery Systems, Inc. refused and/or failed to properly disclose
3 to or apprise Plaintiff of his rights under the FLSA.

4 31. Plaintiff has retained the law firm of Phillips Dayes Law Group, P.C., to
5 represent him in this litigation and has agreed to pay a reasonable fee for the services rendered
6 in the prosecution of this action on his behalf.
7

8 **COUNT ONE**
9 **VIOLATION OF FAIR LABOR STANDARDS ACT**

10 32. Plaintiff incorporates and adopts paragraphs 1 through 31 above as if fully set
11 forth herein.

12 33. While employed at Defendant Accurate Cargo Delivery Systems, Inc., Plaintiff
13 consistently and regularly worked tens of hours of overtime a week.

14 34. Accurate Cargo Delivery Systems, Inc, has intentionally failed and/or refused to
15 pay Plaintiff overtime according to the provisions of the FLSA.

16 35. Accurate Cargo Delivery Systems, Inc., further has engaged in a widespread
17 pattern and practice of violating the provisions of the FLSA by failing to pay Plaintiff in
18 accordance with § 207 of the FLSA.
19

20 36. As a result of Accurate Cargo Delivery Systems, Inc.'s violations of the FLSA,
21 Plaintiff has suffered damages by failing to receive compensation in accordance with § 207 of
22 the FLSA.

23 37. Under 20 U.S.C. §216 Defendants are liable to Plaintiff for an amount equal to
24 one and one-half times his regular pay rate for each hour of overtime worked per week.
25

1 38. In addition to the amount of unpaid wages owed to Plaintiff, he is also entitled to
2 recover an additional equal amount as liquidated damages pursuant to 29 U.S.C. § 216(b).

3 39. Accurate Cargo Delivery Systems, Inc.'s actions in failing to compensate
4 Plaintiff, in violation of the FLSA, were willful.

5 40. Accurate Cargo Delivery Systems, Inc. has not made a good faith effort to
6 comply with the FLSA.

7 41. Plaintiff is also entitled to an award of attorneys' fees pursuant to 29 U.S.C. §
8 216(b).

9
10 WHEREFORE, Plaintiff respectfully requests that judgment be entered in his favor
11 against Defendants:

12 a. Awarding Plaintiff overtime compensation in the amount due to him for all of
13 Plaintiff's time worked in excess of forty (40) hours per work week at an
14 amount equal to one and one-half times Plaintiff's regular rate while at work
15 at Defendant Accurate Cargo Delivery Systems, Inc.;

16 b. Awarding Plaintiff liquidated damages in an amount equal to the overtime
17 award;

18 c. Awarding Plaintiff reasonable attorneys' fees and costs and expenses of the
19 litigation pursuant to 29 U.S.C. § 216(b);

20 d. For Plaintiff's costs incurred in this action;

21 e. Awarding Plaintiff pre-judgment interest, at the highest legal rate, on all
22 amounts set forth in subsections (a) and (b) above from the date of the
23 payment due for that pay period until paid in full;

- 1 f. Awarding Plaintiff post-judgment interest, at the highest legal rate, on all
- 2 awards from the date of such award until paid in full;
- 3 g. For such other and further relief as the Court deems just and proper.

4 **COUNT TWO**

5 **DECLATORY JUDGMENT**

6 42. Plaintiff incorporates and adopts paragraphs 1 through 41 above as if fully set
7 forth herein.

8 43. Plaintiff and Defendant have a Fair Labor Standards Act dispute pending.

9 44. The Court has jurisdiction to hear Plaintiff's request for declaratory relief
10 pursuant to the Declaratory Judgment Act 28 U.S.C. §§ 2201-2202.

11 45. Plaintiff may obtain declaratory relief.

12 46. Defendant employed Plaintiff.

13 47. Defendant is an enterprise covered by the FLSA.

14 48. Plaintiff was individually covered by the FLSA.

15 49. Plaintiff is entitled to overtime wages pursuant to 29 U.S.C. §207.

16 50. Plaintiff is entitled to an equal amount of liquidated damages as Defendant's
17 policy of failing to pay proper overtime compensation remains in effect.

18 51. Defendant did not rely on a good faith defense in its failure to abide by the
19 provisions of the FLSA and failure to pay overtime compensation.

20 52. It is in the public interest to have these declarations of rights recorded as
21 Plaintiff's declaratory judgment action serves the useful purposes of clarifying and settling the
22 legal relations at issue, preventing future harm, and promoting the remedial purposes of the

1 | FLSA.

53. The declaratory judgment action further terminates and affords relief from uncertainty, insecurity, and controversy giving rise to the proceeding.

WHEREFORE, Plaintiff respectfully requests that judgment be entered in his favor against Defendants:

- a. Declaring, pursuant to 29 U.S.C. §§2201 and 2202, that the acts and practices complained of herein are in violation of the overtime provisions of the FLSA
- b. For Plaintiff's costs incurred in this action.
- c. Awarding Plaintiff reasonable attorney's fees and costs and expenses of the litigation pursuant to 29 U.S.C. §216(b);
- d. For such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby requests that upon trial of this action, all issues be submitted to and determined by a jury except those issues expressly reserved by law for determination by the Court.

Dated: March 14, 2013

Respectfully submitted,

PHILLIPS DAYES LAW GROUP PC

~~Trey Dayes~~
~~treyd@phillipslaw.com~~

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8 TREY DAYES
9 Arizona Bar No. 020805
10 treyd@phillipslaw.com
11 Attorney for Plaintiff

COPY

MAR 15 2013



MICHAEL K. JEANES, CLERK
K. WHITSON
DEPUTY CLERK

SUPERIOR COURT OF ARIZONA

MARICOPA COUNTY

OV2013-002434

Case No.:

CERTIFICATE REGARDING
COMPULSORY ARBITRATION

10 Fernando Burciaga, a single man,

11 Plaintiff,

12 vs.

13 Accurate Cargo Delivery Systems, Inc., an
14 Arizona corporation; Kenneth Reynolds and
15 Kimberly Reynolds, husband and wife,

Defendants.

16 The undersigned certifies that he knows the dollar limits and any other limitations set
17 forth by the local rules of practice for this Court, and further certifies that this case IS subject
18 to compulsory arbitration, as provided by Rules 72 through 76 of the Arizona Rules of Civil
19 Procedure.

20 Dated: March 14, 2013

Respectfully submitted,

21 PHILLIPS DAYES LAW GROUP PC

22 A handwritten signature of Trey Dayes in black ink.
23 Trey Dayes
24 treyd@phillipslaw.com
25 Attorney for Plaintiff